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This Week in Sacramento

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California Links

State Senate

State Assembly

Department of Insurance

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Governor Brown Has 941 Bills To Act On By September 30

The legislation on Governor Jerry Brown's desk and heading his way are as follows:

- From the Assembly – 187 Assembly Bills on the Governor's Desk; 410 in Engrossing and Enrolling; and, 597 Assembly Bills remaining
- From the Senate – 91 Senate Bills on the Governor's Desk; 253 in Engrossing and Enrolling; and, 344 Senate Bills remaining

So, there are 278 bills on the Governor's Desk today, with 663 headed his way that are currently in Engrossing and Enrolling, for a total of 941 bills remaining for final action. The deadline for final action is Sunday, September 30.

Currently, Governor Brown has signed 269 measures and vetoed 7 measures for a total of 276 Assembly and Senate bills acted upon.

At the end of this signing session, the Governor will have acted upon a total of 1,217 Assembly and Senate bills.

Recap: Four CDI-Sponsored Wildfire Insurance-Related Bills On Governor's Desk

Four bills sponsored by the Insurance Commissioner that are wildfire insurance-related are currently on Governor Jerry Brown's desk. **SB 894** (Dodd, Dem-Napa), **AB 1772** (Aguiar-Curry, Dem-Calistoga), **AB 1800** (Levine, Dem-Marin), and **AB 1875** (Wood, Dem-Santa Rosa) aim to address issues facing wildfire survivors including underinsurance, rebuilding, and recovery.

SB 894 provides survivors the option to combine some coverages within their homeowner policy to offset the underinsured amount in their home. Consumers qualify for this provision if they meet 3 tests: 1) it is following a declared disaster; 2) they suffer a total loss; and, 3) they are underinsured in their primary dwelling or Coverage A. SB 894 also provides homeowners suffering a total loss from a fire to 2 years of renewal offers, instead of the current one year of renewal.

After losing a home or business in a fire resulting in a declared state of emergency, current law provides a policyholder at least 2 years to rebuild their property and receive the full replacement cost coverage they paid for. AB 1772 extends the amount of time a home or business owner has to rebuild an insured property from 2 to 3 years after a declared wildfire emergency and receive the full replacement costs. In the event of a total loss, AB 1800 requires an insurer pay the full

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extended replacement cost benefit covered, regardless whether the policyholder chooses to rebuild at the same location, rebuild at a new location, or purchase an already built home.

Regarding AB 1875, this concerns extended replacement cost (ERC) coverage, which allows property owners to purchase limits above the estimated cost to replace their home. AB 1875 requires an insurer who does not provide at least 50% ERC to direct the consumer to an insurer that might. The bill includes a provision creating a home insurance finder to help consumers locate possible residential property insurance options.

Employers Await The Governor's Decision On Many Labor Bills

Now that the Legislature has adjourned for the year, Governor Jerry Brown has until September 30 to sign, veto, or otherwise decline to act upon these bills. The bills that become law will take effect on January 1, 2019, unless otherwise specified in the text of the measure. As always, the long list of bills crossing the governor's desk include numerous labor and employment items that impact the operations of private employers in California.

Sexual Harassment

This year many of the bills coming out of the Legislature address sexual harassment in the workplace.

- Workplace Harassment Omnibus

AB 3081 (Gonzalez-Fletcher, Dem-San Diego) broadly attempts to address workplace harassment on three different fronts. First, it makes client employers and labor contractors jointly liable for civil liability for sexual harassment, including harassment on the basis of pregnancy, childbirth or related conditions. Client employers and labor contractors also are forbidden from retaliating against employees who file claims. Second, AB 3081 amends the Labor Code to prohibit employers from discriminating or retaliating against an employee because of his or her status as a victim of sexual harassment. The bill augments existing protections for employees who are victims of domestic violence, sexual assault, or stalking. Third, the measure creates a rebuttable presumption of unlawful retaliation if an employer discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days after the employer has acquired actual knowledge of the employee's status as a sexual harassment victim.

In the past, Governor Brown has expressed reluctance to expand concepts of joint liability, but perhaps the #MeToo momentum may prove persuasive.

- Nondisclosure Agreements, Releases & Mandatory Arbitration Provisions Restrictions

Several bills attempt to limit the use of employer-employee agreements as they relate to prohibited harassment in the workplace.

AB 3080 (Gonzalez-Fletcher, Dem-San Diego) addresses non-disparagement clauses and mandatory arbitration agreements. The bill forbids organizations from prohibiting applicants, employees, or independent contractors from disclosing to any person an instance of sexual harassment that the employee or independent contractor suffers, witnesses, or discovers in the workplace or in the performance of the contract. AB 3080 states that organizations may not

require any applicant or any employee to waive any right, forum, or procedure for a violation of any provision of the Fair Employment and Housing Act (FEHA) or the Labor Code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation.

The measure provides that arbitration agreements that require employees to opt out or otherwise take affirmative steps to preserve their rights are covered by this statute. In other words, an arbitration agreement with an opt-out provision is still unenforceable.

AB 3080 is similar to a bill that made it to the Governor's desk in 2015, which also limited workplace arbitration agreements. The Governor vetoed that bill. Should AB 3080 be signed by Governor Brown, it is anticipated that it will be subject to legal challenge on the basis that it is preempted by the Federal Arbitration Act.

- Sexual Harassment Public Disclosure

The Legislature has approved several bills that could facilitate the public disclosure of sexual harassment claims. These bills seek to negate certain types of contractual terms that might operate to discourage victims or witnesses from speaking out.

AB 3109 (Stone, Dem-Monterey) nullifies any term in a contract or settlement agreement that waives a party's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or sexual harassment. The bill applies where the party has been required or requested to attend the proceeding pursuant to a court order, subpoena, or written request from an administrative agency or the Legislature.

Another measure, **SB 820** (Leyva, Dem-San Bernardino), focuses on nondisclosure clauses in settlement agreements. The legislation prohibits provisions in a settlement agreement that prevent the disclosure of factual information relating to claims of sexual assault, sexual harassment, harassment or discrimination based on sex, or retaliation for filing a claim of sexual harassment. It also prevents courts from restricting the disclosure of such facts in relevant civil proceedings. In addition, SB 820 bans provisions precluding the disclosure of a settlement payment amount. Lastly, a provision that shields the identity of the claimant and all facts that could lead to the discovery of his or her identity, including pleadings filed in court, may be included within a settlement agreement at the request of the claimant.

Like AB 3080, **SB 1300** (Jackson, Dem-Santa Barbara) curtails an employer's ability to utilize non-disparagement clauses and waivers for claims asserted under the California Fair Employment and Housing Act. The bill makes it unlawful for an employer, in exchange for a raise or bonus, or as a condition of employment or continued employment to require an employee to sign a release of a claim or right, including any release covering claims against an employer, the right to file and pursue civil action, or the ability to notify any court, law enforcement, or governmental agency. SB 1300 also prohibits non-disparagement agreements that deny the employee the right to disclose information about unlawful acts in the workplace, including sexual harassment.

Administrative Enforcement Procedures

The Fair Employment and Housing Act prohibits certain types of discrimination and harassment against employees. Under existing law, individuals have one year to file an administrative charge with the Department of Fair Employment and Housing. **AB 1870** (Reyes, Dem-San Bernardino) changes that deadline to grant employees 3 years to file a FEHA complaint, from the date of the unlawful conduct or refusal to cooperate. The bill also adds a 90-day extension to the filing deadline, which applies if the aggrieved individual first obtained knowledge of the facts of the alleged unlawful practice during the 90 days following the expiration of the applicable filing deadline.

Recordkeeping Requirements

AB 1867 (Reyes, Dem-San Bernardino) requires employers with 50 or more employees to maintain records of employee complaints alleging sexual harassment. Employee complaint is defined to include complaints filed through the internal reporting process promulgated by the employer. Records of internal complaints need to be kept for 5 years from the separation date of the complainant or the alleged harasser named in the complaint, whichever date is later. The author argues that the retention of these records would identify harassers and limit their ability to repeat misconduct.

Antiharassment Training

As of now, California law generally requires employers with 50 or more employees to provide supervisory personnel with training regarding sexual harassment and similar prohibited conduct. This year the Legislature sent a variety of training-related bills to the Governor that impose additional duties.

Under **SB 1343** (Mitchell, Dem-Los Angeles), employers with 5 or more employees would be obligated to provide antiharassment training. In addition to applying the supervisory training requirement to smaller employers, SB 1343 also mandates sexual harassment training to all non-supervisory employees. The first round of training needs to be completed by January 1, 2020, and all training must be repeated every 2 years. Beginning in 2020, training is also mandated for seasonal and temporary employees.

Lactation Accommodation

Under the Labor Code, all employers must grant a reasonable amount of break time to accommodate an employee desiring to express breast milk for a child. Currently, employers must provide employees with a location, other than a toilet stall, that is near their work area, to express milk in private. The Governor is weighing two bills that enhance existing protections for employees who require lactation breaks.

AB 1976 (Limon, Dem-Santa Barbara) clarifies that the lactation space must be some location other than a bathroom. This measure removes the possibility that an employer could provide space within a bathroom as long as the space is not a toilet stall. It also details the circumstances under which an employer may provide a temporary lactation location. AB 1976 exempts employers if they can show undue hardship and otherwise make reasonable efforts to provide a lactation space other than a toilet.

The provisions of **SB 937** (Wiener, Dem-San Francisco) is more far reaching in that it adds significant requirements for lactation space. The bill specifies that the lactation room or location must be shielded from view, free from intrusion, and clean and safe. This space must offer a surface (like a table) to place a breast pump and personal items, a place to sit, and access to electricity. SB 937 obligates employers to provide access to a sink and refrigerator for storing milk near the employee's work area. Failure to comply with the lactation break or location requirements constitutes a failure to provide a rest period and could result in civil penalties. Employers are prohibited from discriminating or retaliating against employees availing themselves of their rights under this law. Employers with fewer than 50 employees could request an exemption from the location requirements if they could show undue hardship in light of the size, nature, or structure of their business.

Women Corporate Board of Directors Membership

SB 826 (Leyva, Dem-San Bernardino) requires publicly held corporations, with principal executive offices located in California, to include women directors on their boards. This measure requires corporations to have at least one female director by the close of the 2019 calendar year. By the end of 2021, corporations with 5 or more directors on the board must include at least 2 female members. And boards with 6 or more board seats must include at least 3 women. Penalties may be imposed for failure to timely file board member information; penalty amounts would start at $100,000 for a first violation and rise to $300,000 for subsequent violations.

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